

## Brigham Young University Law School BYU Law Digital Commons

---

### Utah Supreme Court Briefs (1965 –)

---

1968

# Lakeshore Motor Coach Lines, Inc., Wasatch Motors, Inc., Metro Transportation, Inc., Ogden Bus Lines v. Salt Lake Transportation Company, Public Service Commission Of Utah, Donald Hacking, Hal S. Bennett And Donald T. Adams : Brief of Defendants

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Phil L. Hansen, Wright Volker, and Joseph J. Palmer; Attorneys for Defendants

---

#### Recommended Citation

Brief of Respondent, *Lakeshore Motor Coach Lines v. Salt Lake Transportation Company*, No. 10904 (1968).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/4297](https://digitalcommons.law.byu.edu/uofu_sc2/4297)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

---

# IN THE SUPREME COURT OF THE STATE OF UTAH

---

LAKE SHORE MOTOR COACH LINES, INC.,  
WASATCH MOTORS, INC., METRO TRANS-  
PORTATION CO. and OGDEN BUS LINES

*Plaintiffs,*

v.

SALT LAKE TRANSPORTATION COMPANY  
and PUBLIC SERVICE COMMISSION OF  
UTAH, et al.,

*Defendants.*

Case No. 10904

LEWIS BROS. STAGES, INC. and BINGHAM  
STAGE LINES,

*Plaintiffs,*

v.

PUBLIC SERVICE COMMISSION OF UTAH,  
et al., and SALT LAKE TRANSPORTATION  
COMPANY....

*Defendants.*

Case No. 10907

CONTINENTAL BUS SYSTEM, INC., et al.,

*Plaintiffs,*

vs.

PUBLIC SERVICE COMMISSION OF UTAH,  
et al., and SALT LAKE TRANSPORTATION  
COMPANY.

*Defendants.*

Case No. 10908

---

## BRIEF OF DEFENDANTS

---

### REVIEW OF AN ORDER OF THE PUBLIC SERVICE COMMISSION OF UTAH

---

SIDNEY G. BAUCOM, Esq.  
1407 West North Temple  
Salt Lake City, Utah  
*Attorney for Plaintiffs*  
*Continental Bus System,*  
*Inc., et al.*

HARRY D. PUGSLEY, Esq.  
315 East 2nd South  
Salt Lake City, Utah  
*Attorney for Plaintiffs Lake*  
*Shore Motor Coach Lines,*  
*Inc., et al.*

IRENE WARR, Esq.  
Judge Building  
Salt Lake City, Utah  
*Attorney for Plaintiffs Lewis*  
*Bros Stages, Inc. and*  
*Bingham Stage Lines*

PHIL L. HANSEN  
Attorney General of Utah and  
H. WRIGHT VOLKER  
Assistant Attorney General  
State Capitol Building  
Salt Lake City, Utah  
*Attorneys for Defendant*  
*Public Service Commission of*  
*Utah, et al.*

WORSLEY, SNOW &  
CHRISTENSEN and  
JOSEPH J. PALMER  
Continental Bank Bldg.  
Salt Lake City, Utah  
*Attorneys for Defendant*  
*Salt Lake Transportation Co.*

## TABLE OF CONTENTS

	Page
STATEMENT OF CASE .....	1
DISPOSITION OF THE CASE .....	2
RELIEF SOUGHT ON APPEAL .....	2
STATEMENT OF THE FACTS .....	2
ARGUMENT .....	31
POINT I	
THE EVIDENCE SUPPORTS THE COMMISSION'S FINDINGS THAT THERE IS NEED FOR DEFENDANT'S PROPOSED SERVICE, THAT EXISTING SERVICE IS INADEQUATE AND THAT THE PUBLIC CONVENIENCE AND NECESSITY REQUIRES GRANTING DEFENDANT'S APPLICATION .....	31
POINT II	
THE COMMISSION'S FINDINGS AND ORDER WERE NOT ARBITRARY AND CAPRICIOUS AND DID CONSIDER THE EFFECT OF GRANTING THE APPLICATION ON EXISTING CARRIERS .....	44
POINT III	
PLANTIFF CONTINENTAL IS BARRED FROM COMPLAINING THAT THE COMMISSION FAILED TO MAKE ESSENTIAL FINDINGS; THE COMMISSION DID NOT FAIL TO MAKE ESSENTIAL FINDINGS .....	51
CONCLUSION .....	53

## TABLE OF CONTENTS (Continued)

### CASES CITED

	Page
<i>Ashworth Transfer Co. v. Public Service Commission</i> , 2 Utah 2d 23, 268 P.2d 990 (1954) .....	32, 44
<i>Garrett Freightlines, Inc. v. Hunt</i> , 19 Utah 2d 234, 429 P.2d 981 (1967) .....	39
<i>Lake Shore Motor Coach Lines v. Bennett</i> , 8 Utah 2d 293, 333 P.2d 1061 .....	35, 42, 49
<i>Lake Shore Motor Coach Lines, Inc. v. Welling</i> , 9 Utah 2d 114, 339 P.2d 1011 (1959) .....	41
<i>Lewis v. Wycoff Company</i> , 18 Utah 2d 255, 420 P.2d 264 (1966) .....	31
<i>Sagniauw Broadcasting v. F.C.C.</i> , 96 F.2d 554 .....	
<i>Salt Lake Transfer v. Public Service Commission</i> , 11 Utah 2d 121, 355 P.2d 706 (1960) .....	
<i>Utah Light and Traction Co. v. Public Service Commission</i> , 101 Ut. 99, 18 P.2d 683 (1941) .....	47
54-6-12(a), U.C.A. 1953 .....	
54-77-15, U.C.A. 1953 .....	

# IN THE SUPREME COURT OF THE STATE OF UTAH

LAKE SHORE MOTOR COACH LINES, INC.,  
WASATCH MOTORS, INC., METRO TRANS-  
PORTATION CO. and OGDEN BUS LINES

*Plaintiffs,*

v.

SALT LAKE TRANSPORTATION COMPANY  
and PUBLIC SERVICE COMMISSION OF  
UTAH, et al.,

*Defendants.*

Case No. 10904

LEWIS BROS. STAGES, INC. and BINGHAM  
STAGE LINES,

*Plaintiffs,*

v.

PUBLIC SERVICE COMMISSION OF UTAH,  
et al., and SALT LAKE TRANSPORTATION  
COMPANY.

*Defendants.*

Case No. 10907

CONTINENTAL BUS SYSTEM, INC., et al.,

*Plaintiffs,*

vs.

PUBLIC SERVICE COMMISSION OF UTAH,  
et al., and SALT LAKE TRANSPORTATION  
COMPANY.

*Defendants.*

Case No. 10908

## BRIEF OF DEFENDANTS

### STATEMENT OF CASE

This is an original proceeding in this Court to review an order of the Public Service Commission granting defendant Salt Lake Transportation Company increased common carrier authority to transport passengers, in charter operations, and in special operations in sight-seeing or passenger tours, between all points and places within a 26 air-mile radius of the city limits of Salt Lake City, Utah, including Salt Lake City, but excluding all points in Weber County and in Utah County beyond such 26 mile radial area, and from said radial area to

all points and places in the State of Utah, and return, over pre-determined and/or irregular routes, and excluding traffic originating at Provo, and restricted against service in scheduled operations exclusively over principal highways of a type performed by scheduled regular route buslines.

### DISPOSITION OF THE CASE

The Public Service Commission granted defendant Salt Lake Transportation Company the foregoing authority sought.

### RELIEF SOUGHT ON APPEAL

Defendants pray the order of the Public Service Commission be affirmed.

### STATEMENT OF THE FACTS

Defendants cannot agree with the Statement of Facts in plaintiffs' briefs, for they fail to state that defendant Salt Lake Transportation applied for authority to render a new service not now being rendered by any carrier, fail to set forth the testimony of witnesses showing the need for such service, and except for Continental Bus System, Inc.'s brief, fail to give citations to the record. Therefore, defendants state the facts as follows.

Defendant Salt Lake Transportation Company, d/b/a Gray Line Motor Tours, held common carrier authority authorizing the transportation of "sightseeing passengers on regular and irregular sightseeing schedu-

or schedules and on regular and irregular sightseeing route or routes, from any point in Salt Lake City to any point or points in the State of Utah and return to any point in Salt Lake City" and charter authority "to transport tourists and self organized groups on round trips from Salt Lake City to points in Utah" (R-28). It applied to increase its authority as above granted.

Plaintiffs attack the granting of that authority only insofar as it pertains to charter operations originating on the regular operations bus routes they serve.

Plaintiff Lakeshore, by Certificate of Convenience and Necessity issued October 22, 1940, has authority to transport persons "on charter round trips originating on the routes *now* served by applicant in its regular common carrier operations within the State of Utah" (R-55) which routes are from Salt Lake City to Ogden (R-558, 398).

Plaintiff Ogden Bus Lines has charter authority limited to business originating at points served in Ogden and vicinity (R-559). Mr. John Yeaman, a partner of Ogden Bus Lines, testified as to charter service, "we can originate only where we serve" and he therefore said Ogden Bus Lines had no conflict with Salt Lake Transportation's application (R-424).

Plaintiffs Wasatch Motors, Inc. and Metro Transportation Co. each have charter authority from Weber County to any point in Utah (R-560, 562), but their only interest in the application is charter tours originating at

Hill Air Force Base, which is in both Weber and Davis Counties (R-418).

Plaintiff Bingham Stage Lines has regular route service authority between Salt Lake City and Bingham, Utah, and by order issued December 31, 1946, has authority for:

“charter round trip service originating on the routes *now* served by applicant in its regular common carrier operations, to points within the State of Utah, providing that this certificate shall not be construed to permit applicant to establish transportation service for tourists, . . . nor to conduct trips wholly within the corporate limits of cities served by urban transportation companies.” (R-572)

Plaintiff Lewis Bros. Stages has regular route passenger authority between Salt Lake City and Park City, and between Salt Lake City and Wendover, and by order dated June 11, 1954, has authority for “charter round trip service originating on the routes *now* served by applicant in his regular route common carrier operation to points within the State of Utah,” restricted against establishing any regular schedule or regular route in charter round trip service (R-567).

Plaintiffs Continental Bus System, Inc., American Bus Lines Inc. and Denver-Salt Lake-Pacific Stages operate jointly and are herein collectively called “Continental.” It holds regular route passenger operating authority from Salt Lake City south on U.S. Highway 91, from Salt Lake City west over U. S. Highway 40 to



the Utah-Nevada line and over U. S. Highway 91 from the Utah-Wyoming line on the north to the Utah-Arizona line on the south, from Salt Lake City to the Utah-Colorado line over U. S. Highway 40, or between Salt Lake City and Provo on U. S. Highway 91, or between Provo and Heber on U. S. Highway 189, or from Orem to the junction of U. S. Highway 189 over U. S. Highway 52, and from Heber to the Utah-Colorado line over U. S. Highway 40. It holds authority to "operate charter round trips *originating on such routes*," restricted against transportation service for tourists and service on any regular schedule or route, as well as trips wholly within the corporate limits of cities served by inter-urban transportation companies" (R-622).

Hence, Salt Lake Transportation's application covers a new field of service not presently being served by any of the plaintiffs. It proposes both charter and special tours service to and from points within a radius of 26 miles from the limits of Salt Lake City (excluding Weber County and Provo), and from such 26 mile radius throughout the State of Utah, whereas each plaintiff has charter authority within that 26 miles radius limited to such charters only as arise from their regular route bus lines (or in the case of Wasatch and Metro, as arise from Hill Air Force Base).

In support of the application is the following evidence.

Charles A. Boynton, Jr., President of Defendant Salt Lake Transportation, testified as follows. There is steady representation of the company by Gray Line

Sightseeing Companies Associated, an association of sightseeing companies over the United States. This Association distributes the tariff (pages 121-122 of R-542) describing the company's operations to over 30,000 travel forwarding personnel in the United States in a national effort to promote tourism in Utah (R-210 - 211). There are 15 buses of 41 to 49 passenger capacity and six 8-door station-wagons used in charter, sightseeing and special service operations and 90 automobiles from the rent-car fleet which can be and are used in connection with sightseeing and charter rights (R-212, 532-36). He identified a number of brochures (R-537) which are distributed locally in quantity to travel shows, direct mailing programs, through air carriers, etc., to promote tourism (R-214). Tours are changed to make them more attractive to the public as required.

He testified:

"We can see a tremendous growth in the population of the Wasatch front, and of general national recognition of the area, not only by local people but by national people, . . ." (R-215).

He described a number of brochures issued by the State of Utah (R-517) to demonstrate "the tremendous increase in effort which is being made by the State to publicize and offer, if I might say, sufficient income to warrant capital investment in Utah in connection with the \* \* \* general field of recreation" (R-216). There has been development at a rapid pace of scenic points of interest throughout the State which relate directly to the expanded area of the company's application as to points of

origin. The State Parks activity is establishing places which will be traffic destination and origin points, as are the National Park and (Bureau of) Reclamation developments (R-218-9). Considering such developments within the State, the company's existing authority is entirely too restrictive. He said:

"We believe that the development of the Wasatch Front is very pertinent to our future operations and to service to the general public, not only the local public but the foreign public which comes into the State and requires local transportation, in the development of the knowledge of our ski terrain in this section through our participation in the Olympic decision, all winter sports, the activities of the State departments, this type of thing which is so vital in Utah just now, *presents a requirement for service which we do not think is being filled*, and which we think we are eminently qualified to handle (R-222). We felt that there was a necessity for transportation interior in this (26 mile) area which had to be solicited and promoted, that it was a cohesive area and intelligible to present to the minds of the public as a single area, and that the need for transportation within it was cogent and recognizable as a unanimity." (R-223)

The company proposes special operations and charter trips for the small population centers located within Salt Lake County, such as Kearns, Holladay and Draper (R-224). He testified:

"The community along the Wasatch front, and particularly in Salt Lake County, has become more of a metropolitan area than a city and a

county with various chartered towns. The mind of the public here are directed toward the metropolitan area much more than divided into communities, and although the legal markings are there, the commercial and business uses are throughout the valley." (R-225).

He testified that with reference to the ski resorts of Brighton, Alta, Park City, and the Utah State Park at Heber that:

"We have had demands, because of the type of service we render in Salt Lake City — we have had demand for services between the ski places — originating at let's say, Alta, and going to Brighton or Park City, or originating at any of the other two areas and going to one of the three. This type of thing in other parts of the county, in particular ski areas, seems to be also an evidenced need, where the skier wants to move from one terrain to another, and we anticipate considerable development of further winter sports activity in this area. The requirements of the Olympic Committee and that kind of thing, which are very forward in the minds and promotional thoughts of our people so involved here would develop that kind of industry, and also the ability and willingness for capital to invest in this type of thing will help it." (R-226).

The Company proposes institution of charter service originating at these points within the 26 mile radius. If a community like Park City gatherings wish to be transported into Salt Lake City or throughout the state on charter basis and such things are quite attractive to the local population throughout the county base (R-226). If

said the present charter operations originating only at Salt Lake City are difficult because people have to gather themselves into Salt Lake City prior to taking the charter trip, and the charters could be more effective if the company could pick up people wherever they might be in the 26 mile base (R-227). He said:

“We know that considerable business originates in these sections, because of calls to our office, and we know also that there is a potential there. The town of Coalville is practically without service. The testimony was given here with reference to Heber. Correspondence we have had from American Fork, telephone calls from Tooele and up north along the line to Ogden, requirements for service, which we have had to tell people we have no rights. This is also true of the Heber Valley section and east of the Wasatch.”

The urban population of Salt Lake County has increased 48.3% and Davis County has increased 265.2% from 1950 to 1960 (R-538). The charter and sightseeing business has increased far beyond the proportion of the actual increase in population (R-231). It would not be feasible to conduct operations if individual points and communities in the 26 mile radius were eliminated, since the public cannot be properly advised of such exceptions to the general statement of service within that area (R-232). He testified the company eliminated Ogden and Provo from the area of proposed initiation of service because “we are attempting to include only the section of the country which does not currently have service.” (R-235).

Three witnesses from Utah State agencies appear for Salt Lake Transportation Co.

H. Devereaux Jennings, Assistant Director of the Tourist and Publicity Council of the State of Utah, testified (R-31) there has been a growth of about 20% per annum in participation and development in winter sports in the area of Heber City, Park City, Alta, Brighton, Solitude, and that with this growth there will be new hotel facilities. "Cross transportation, of course, will be a must in this particular development" (R-32 - 33). He testified of investment activity for a new resort in the Gad Valley, a mile below Alta; a resort hotel at the mouth of Alta Canyon (R-34); at Wasatch State Park out of Midway, Utah (R-38); and the Jordanelle Dam northwest of Heber City (R-38 - 9). The state's advertising and publicity program has grown from \$7,000 to over \$100,000 in the past three years, and the existence of adequate bus transportation facilities affect these promotions both as to the tourist who arrives without his own car and with regard to the local based population that wants to move from one area to another for such matters as conventions or from schools (R-40). Any accelerated transportation program would certainly be beneficial to the persons coming into Salt Lake City desiring transportation to the ski resorts, he said (R-43 - 44) and explained "accelerated" to mean "convenient" (R-53). As to the ability to move between the ski resorts, either by charter or tour service, he testified "there has been some demand for that and some negotiations to try and arrange this" (R-44). His office is "categorically in favor

for any transportation that would improve the mobility of the tourists within the (26 mile) area" (R-44). He said twice on cross-examination that he had made investigation as to what transportation is available in the ski areas (R-53, 54) and he said as to charter service:

"Some people are in Park City; they want to go over to Alta, and they have difficulty in figuring how to get there."

\* \* \*

Q. Would that be two or three people that would want to go from one ski area to another as distinguished from a large group?

A. Well, I think if the service were available they could have large groups.

Q. Well, do you know that service isn't available?

A. I think it is difficult.

Q. What is the difficulty?

A. Well, the difficulty is that it just isn't there and made known and made part of the sports program (R-56 - 7).

He testified:

"A. . . . as far as charter business and the tour business is concerned, I don't think we have developed the promotion of this to the full extent. I know of cities where thousands of people get on buses, charter, to the resorts every single weekend, and I don't think that we have really gone into that market, and maybe that is the place I have been misunderstood along the way.

Q. Within this area, would there be anything other than the principal highways where it might be helpful to have charter service, such as Kington, for example?

A. Well, actually — particularly these school programs and teaching programs can be developed to a tremendous degree where bus, to the ski resorts bumper to bumper every weekend. A perfect example is the northwest part of the United States.

Q. Do you know whether or not serious service, charter service, is presently available that type of program from all points and places within this 26 mile radius of Salt Lake at present time?

A. I don't know if it is available in all areas.

Q. Would it be desirable that it be available?

A. I would certainly think so, with the development of skiing and the school program throughout the country." R-62, 44.

He said he had called on officials of Continental System to promote more charter business for good promotion of the winter sports area and they had been interested. R-62-7. He testified in cross-examination:

"Q. Now, sir, is it your testimony that all the present bus companies there are sufficient to serve in this area that there is still a need for an additional bus company in this area at this time?

A. I am not a traffic manager, and I am obviously not in the bus business. I think that as far as making it known and the promotion and the selling the development



our ski areas, we could stand more activity from the bus companies.

\* \* \*

A. But, I think along these lines there may be buses all over the area available, but no one knows they are there (R-67).

Murray Moler, Chairman of the Utah Travel Council, whose purpose is to increase tourism in Utah, testified the Council's advertising appropriation for the current biennium is 1.4 million dollars used generally for advertising and promotion of tourism conducted outside the state to promote tourist business in Utah (R-161 - 3). He testified: "The more transportation service is available, the better the travelers to Utah can be served." (R-161). He said tours are becoming more and more popular with traveling people around the world (R-166), the addition of local Utah tours in the Gray Line tariff gives it wider distribution (R-166) and it benefits tourists if the tours proposed by a carrier are promoted by that carrier through the means of advertising and other media (R-171).

Mr. F. C. Koziol, Director of the Utah State Park and Recreation Commission, testified. He formerly was Supervisor of the Wasatch National Forest with the United States Government (R-73-4). Since 1957 when the Park and Recreation Commission was created there have been some 33 to 35 state park units established including Wasatch Mountain State Park near Heber. It has an 18-hole golf course under construction, a number of picnic grounds, recreation units for campers, etc. (R-175).

When asked of planned promotions for the golf course, he said:

"A. . . . Our Commission expressed the feeling that by inviting to the Wasatch Mountain Golf course organized groups, special groups, church groups, industrial groups, those type of people who like to participate in their own golf tournaments to patronize our golf course because these groups have found a limit of finding those type of accommodations on presently available public courses . . . in other words, they are very limited . . . so we did . . . we are catering to those type of organizations to come and utilize our golf course during weekdays, and this, we feel, will be an important supporting patronage for our installation over there.

Q. Where would these tournament organizations likely come from? Would they be Salt Lake City or other places in the area within the scope of the application here which is 25 (sic) miles of the Salt Lake City limits.

\* \* \*

A. I would say that this is not speculative to the extent that there is growing patronage of golf course enthusiasts all along the Wasatch Front, extending from perhaps as far as Ogden to Provo, Springville and that general area. I believe that we are quite confident that we would attract a good many of these type of groups from this general front area." (R-176 - 7)

He said Rockport boating area is a State Park within the 26 mile radius of Salt Lake, has boating, camping, cabins, water skiing, regattas, is a rather complete complex of recreational installations (R-178) and there

are quite a significant number of excursions by groups of people to Rockport (R-184). Negotiations are in stage to include Deer Creek Reservoir as a state park and when the Jordanelle Reservoir is built on the Provo River four miles north of Heber, it will be a state park. He identified a brochure (R-527 pointing out numerous State Parks. The State Parks system will "make a very significant contribution to tourism in Utah and to holding tourists longer in Utah." Public charter, pleasure or sightseeing tours have significance in development of the program. He said as to those units of the State Park System like the Rockport area, the Wasatch Mountain State Park and Willard and those that are in close proximity to large centers of population, *"there is little doubt that the need for additional transportation will be great."* (R-183)

Rulon Doman, Scout Executive Emeritus of the Great Salt Lake Council of Boy Scouts of America, involving the counties of Salt Lake, Summit, Tooele and the south half of Davis (R-88) testified. There are 1,600 scout troops located in the Council area with six different camps at Tracy Wigwam in Millcreek Canyon in Salt Lake County, at Mirror Lake in Duchesne County, on the east fork of Bear River 35 miles southeast of Evanston, on the eastern shore of Bear Lake in Rich County, an Explorer Lodge at Brighton, Utah and an Explorer camp east of Alpine, Wyoming. Tracy Wigwam and Brighton are open year-round; scouts circulate to the camps on weekends and on one to two week trips; the boys come from everywhere in the Council area; in ad-

dition, the Counsel commonly conducts trips into the High Uintahs, into southern Utah, into Escalante country, into San Juan country and out of state; there has been a steady increase in interest and in the number of boys involved in these tours. The Council encourages the use of public transportation and frequently arranges for transportation where more than one troop is involved (R-88-92). He was familiar with the application of Salt Lake Transportation Company, and said that "it would be a decided advantage to us" if a charter service could pick up scouts at more than one location within the area of the Great Salt Lake Council and transport them to camps or points of interest within the 26 mile radius (R-96). They need that type of service, "it would be very helpful" (R-97). They "quite often have need" for charter service transporting from within the 26 mile radius to other points and places in the State of Utah (R-97), and they "are frequently asked to arrange service for sightseeing or pleasure tours visiting various points of interest within the 26 mile radius. When asked whether he supported the application of Salt Lake Transportation, he said "my personal feeling is that it would be a desirable service from our point of view" (R-100). On cross-examination he said as to existing charter service, "it would have been more convenient had the boys not had to come to Salt Lake to get on it" (R-101). When asked if it would be of benefit had trips been able to originate at the actual meeting place of the Scout, such as Granger or Holladay or some other point, he said "It would be advantageous to us to be able to pick

at any point within our area, or to originate at points within the area" and "it certainly would be advantageous" to have a carrier which could originate at any point within the 26 miles radius of Salt Lake City (R-109 - 10). It would definitely be of advantage to have an established tour which could stop at various points within the Scout area and take them on tour throughout the State of Utah without having a firm charter service (R-111).

"If we were able to have a regular service that would enable picking up of boys between here and Camp Steiner and East Fork of the Bear River, for instance, I am sure we could have a ready acceptance." (R-112).

Seven other witnesses testified as to six other limited areas within the 26 mile radius of Salt Lake City.

Lowe Ashton, President of the Wasatch Chamber of Commerce in Heber City serving Wasatch County testified (R-70). A resolution of the Wasatch Chamber of Commerce (R-524) was identified and received in evidence (R-74) saying:

"The Wasatch Chamber of Commerce, recognizing the future of Wasatch County will increasingly become dependent upon the tourist and sight-seeing visitors and those industries related to such people, therefore welcome and support the application of Salt Lake Transportation Company requesting the Public Service Commission of Utah to allow them to service the Wasatch County area . . ."

Points of interest in the area are Wasatch Mountain State Park with more than 40,000 acres of scenic land

and golf courses available (R-74), the Homestead Mountain Spa, and considerable portions of the Wasatch and Uintah Forest areas. Access into the Park City, Alton, and Brighton areas is being developed along with the development of the Jordanelle Reservoir and the fishing at Deer Creek Reservoir (R-75). He said:

“We recognize that the future — that the economic future of our valley is dependent upon the increase of the tourist and sightseer type of an individual. Our base has long been agricultural and mining, and we cannot sustain our economic conditions with these two industries any longer . . . . Well, it was noted by our Chamber at this particular discussion that the bus service, particularly in relationship to our valley had actually curtailed in the last few years, and that we wanted to see any firm that was interested in making an effort to develop a new type of business in our areas was more than welcome. We need them.” (R-76).

When asked why he supported the application, he testified:

“Well, it is a service that we — that to our knowledge has not been available in our area before, and it certainly lends itself to the development of a tourist industry, which we are vitally concerned with. We have got to have more bus facilities and be aware of them than we certainly have now.” (R-79).

On cross-examination, when asked whether there was need for additional charter service, he said, “There certainly has not been any effort in any other bus company to show that there was any service available” (R-80).

Andrew R. Hurley, City Attorney of Park City, appeared for the City Council of Park City. He presented an excerpt from the minutes of the City Council (R-526), which was received (R-122), indicating that after discussion of the application of Salt Lake Transportation, a motion was carried to support it. He supported the application because:

“Basically, it is in the best interests of Park City which has become and will increasingly become more so an all-year recreation area devoted in the winter months to skiing and winter sports, and in the summer to the general recreation area; *that Park City has had need of additional service to meet the influx of tourists.*” (R-124).

He described the several million dollars invested in Park City in the form of motels and hotels, the development of ski lifts, restaurants, and other ski facilities in Park City, the increase in population from 1,300 to 1,800 people, the building of a golf course, presently commenced construction of rodeo operations entailing horse rentals and quarter horse raising, cutter racing and contemplated development of a fine arts center (R-125 - 7). When asked whether the type of service in the application, either by charter or tour, between Park City and other points of interest would be of benefit to the area, he said Park City is in the center of a particular grouping of recreation and ski areas and “we feel that any traffic through that community will be to the benefit of Park City.” (R-131). He said he felt there is need for the expanded scope of service at this time (R-125). The basic new industry

which Park City hopes to attract is tourists and recreation (R-128). As to a carrier service, either by charter or tour, which would have various origin points within the 26 mile radius and then afford transportation between those points and Park City, the witness said it would be of benefit,

“ . . . particularly to the winter sports operation, which consists mainly of skiing. If skiing groups could be transported from various points throughout Salt Lake County to Park City, it would increase the flow, and hopefully, during the week ends when business is rather slack.” (R. 138-9)

He said an evening tour, including Park City, as part of the stops or as part of an all-day tour would be of benefit (R-138-39). On cross-examination the witness said he understood Salt Lake Transportation can presently furnish charter service from Salt Lake City to Park City, but the application if granted would add to that service and there would be service from all points throughout Salt Lake County (R-147). He said if the application were granted Salt Lake Transportation would provide origin points throughout the 26 mile radius, particularly in other parts of Salt Lake County than Salt Lake City, that to his knowledge such service is not available and that it is desirable to Park City as additional tourists and travel thereto (R-156-7). He said Park City has basically inadequate streets and any transportation of skiers in public transportation which would lessen the traffic congestion would be of great assistance to Park City (R-158).



Henry Cameron, President of the Granger-Hunter Chamber of Commerce, covering the area approximately 13th West to 75th West in Salt Lake County, testified. He said the proposed service permitting the origin of either tours or charters from the Granger area would be of benefit to that area (R-188-9). When asked if he appeared in support of the application, he said, "I would like to see a carrier that we could count on to at least help us with our ski program. . . . I think maybe just to charter is what we would look to." (R-191).

Two witnesses appeared from the Kearns, Utah area.

Frank C. Burns, President of the Kearns Lion Club, said the service club has "great need" for charter service to get to ski facilities. He testified:

"Then we have had different needs for charter service for the civic organizations to go to visit other clubs and places around the local area. Rather than drive 5 or 10 or 15 cars, we would prefer one charter bus, which we haven't been able to get." (R-193).

He said:

"About I think the winter before last, I contacted Greyhound, Lewis Bros. Stages, and none of them would give us service out there for charter service." (R-194).

When asked if the proposed service would be of benefit to his organization, he said:

"Definitely, to the whole town of Kearns — not only to the Kearns Lions, but the whole town of Kearns, because we are about the fourth or

fifth largest city in Utah, and there is nothing out there. Everything is motor vehicle."

When asked if he supported the application he said, "definitely, definitely." (R-195). He said Continental has not solicited or offered charter services (R-200).

Ted Covington, a director of the Kearns Chamber of Commerce, testified he was authorized by the Chamber to support the application (R-290 - 1). With regard to the application, he said anything that creates a facility of this nature is an asset to the community itself and to his knowledge there are no charter operations which begin and end at Kearns (R-293). When asked if it would benefit his community to have applicant's proposed service available to board at Kearns rather than having to come into Salt Lake, he said (R-294) :

"Very definitely, it would be, inasmuch as it gives the people of the community a choice, for as our present understanding, it is limited to no choice on who you chose to give a service to."

Mr. Ira Beesley, a Director of the South Davis Chamber of Commerce (R-297) presented the Chamber's resolution (R-543) supporting the application which was received (R-302). He said the granting of the application would benefit Davis County, saying :

"We feel that this will enhance charter service into the Davis County area and will bring more people into it, the Valley Music Hall — we feel that any further exposure to the public of Davis County will be beneficial to us." (R-300).

When asked why the expanded areas of service by Salt Lake Transportation would be helpful to the community he said:

“Presently, as far as I know, there is not much activity in soliciting tour service in this particular — this particular county and neighborhood and we feel that any company that is out soliciting business will be of benefit to us.” (R-301).

On cross-examination, he said:

“Q. You want this service throughout all of Davis County, do you?

A. Yes, that is what we are asking for.” (R-304).

Reid D. Pace, Summit County Clerk (R-308), identified a resolution (R-544) of the Board of Commissioners of Summit County favoring the granting of the application of Salt Lake Transportation which was received (R-318). He said he supports the application because:

“We are kind of isolated out there so far as obtaining charter services is concerned. I personally have tried to obtain charter service on two different occasions, and we had to meet Lewis Bros.’ bus at one particular time at Flinders’ Mountain Meadow Ranch, which is 20 to 25 miles from Coalville. . . .

\* \* \*

Q. But suppose the bus were to start at Salt Lake and were able in its tour arrangements to also pick up passengers at Coalville, would that be of interest?

A. I am sure it would. It has only been a year or two since we have any public transpor-

tation facility." (R-314).  
On cross-examination he was asked:

"Q. Can you tell me, Mr. Pace, within the scope of the authority, has the service Lewis Bros. given you been adequate?"

A. Well, I would say adequate —

Q. I appreciate —

Q. I appreciate it would be perhaps inconvenient for you to travel to another destination to meet them.

A. Yes, ma'am." (R-317).  
He said neither Continental Trailways nor Greyhound has every solicited charter service (R-317).

Two ski resort operators testified.

Lee Bronson, owner and manager of the Rustle Lodge at Alta, testified. He described the guest accommodations at Alta as including his lodge, accommodating 70 guests; Alta Lodge, 70 guests; Peruvian Inn, 120 to 130 guests; Goldminer's Daughter, 40 guests; and Snow pine Lodge, 30-40 guests. He described the four chair lifts and several rope tows for skiing (R-319 - 20). Almost all of the overnight guests at Alta are from out of state (R-320). When asked whether a charter service having an origin at various points and places within 26 miles of Salt Lake City would be of benefit, he said:

"There is a very great need for it. . . There is a very definite need for a limousine or a combined limousine and bus service between the ski areas — there is a very definite need for it." (R-321).

He has requests for that type of service once or twice a week from one, two or 10 people from his lodge and it is a problem getting it arranged at present (R-322). When asked if he supported the application, he said very definitely. I think there is a great need for it." (R-323). On cross-examination he said he has had requests from people in Park City wanting to come to Alta (R-325). There would be demand for both tour and charter service, but the demand for charter would be greater (R-328).

Gertrude Howard, owner and operator of Mt. Majestic Manor in Brighton (R-234), identified the skiing facility at Brighton and her lodge housing 60 guests. Solitude ski area two miles below Brighton houses 30 guests (R-235). There has been a steady growth in the use of ski facilities, especially from out of state people. The ski lifts operate in the summer (R-236). When asked if she had requests for service from Brighton to other points, she said:

"Yes, that seem to be a constant inquiry with people that are coming in on an airplane, no transportation, no car, you know in the Brighton area, and wondering how they can go to Alta to ski for the day and come back to Brighton to finish their vacation — how can they get to Park City, you know, for the same reason, and back to Brighton at night — this is in the winter — and in the summertime it is constant, probably as much in demand as in the wintertime. People would so much like to go over the Guardsman's Road to Park City, through the Heber Valley for the day and come back — or for two hours and

come back — not to stay in Park City or not to stay at another place, but still continue to stay in Brighton.

Q. Uh-Huh. And, are you aware of any transportation service at the present time which is available for these — for this type of service?

A. I am totally unaware of anything at the present time that could start at Brighton and go elsewhere."

She said she "surely" supports the application (R-238). When asked if she had personally had requests for the proposed service she said:

"Yes, yes very much so. . . Well the last group I had staying at there would have been 43 people that would have been delighted to go over the pass. They didn't expect all 43 to go in one particular day, but that was the first of June." (The hearing date was June 7).

The requests for this type of transportation have been increasing in frequency (R-243) and that "no one has ever made any attempt to offer any services up there." (R-241 - 2).

Plaintiff Lewis Bros. offered (R-361) a resolution (R-545) of the Park City Chamber of Commerce saying in part:

"The Chamber is very much for inter-area charter trips and lends its whole hearted support to the promotion of these trips between areas but only if a franchise can be granted which will not jeopardize the scheduled bus service Park City now enjoys."

Plaintiff Lewis Bros. called Bill Kouris, Manager of the New Park Hotel in Park City, as a witness (R-369). He testified:

“Q. Mr. Kouris, you would like a service, a transportation service provided by a public carrier which would include as a point Park City?

A. Right.

Q. And which would, I gather also, include other points of interest such as the Homestead. Right?

A. Right.

Q. Now, whether the Homestead would be the only one, or whether there might develop, you see — places they might want to go fish, or any type of sightseeing activity, you would like to see these packages put together that would provide that service?

A. Yes.

Q. And that would be of benefit to your operation?

A. Certainly.” (R. 377-8)

Plaintiff Lewis Bros. called David Robert Jackson, part owner of Chateau Apre Lodge in Park City (R-379). He testified on cross-examination:

“Q. You are interested in the Park City interest belt within a radius of 26 miles of Salt Lake City?

A. We are actually considering the radius further than that; we are trying to get them to come from Ogden, too.

Q. I take it you feel it is important that there be available a transportation service, public transportation service.

A. Yes . . . definitely." (R-383).

Plaintiff Lewis Bros. called Joe Walsh, General Manager of the Treasure Mountain Inn at Park City, as a witness (R-387). He testified on cross-examination:

"Q. And so would a transportation service which in charter service . . . would permit points of origin at various points say within a 26 mile radius of Salt Lake — would that be of any benefit to you?

A. This would be attractive only if it did not disrupt the regularly scheduled bus service we have now.

Q. Let's assume for the moment it did not, would it then be attractive to you?

A. Yes, it would." (R-394).

Joseph M. Lewis, President of plaintiff Bingham Stage Lines, and operating officer of plaintiff Lewis Bros. testified (R-429). He identified Exhibits 32 and 36 (R-574 and 8) showing the charter trips plaintiffs originated from the Granger-Hunter-Magna-Kearns area in 1965 and 1966 to date of hearing. He admitted they show ten charter trips from those areas in 1965, of which four originated from exempt schools and in 1966 show five charter trips of which one was from an exempt school organization (R-453). When asked what the effect of the granting of the application would be on his operation, he testified:



"Well, any loss of revenue which additional competition might create would of course create a problem for us. Our profit picture is not the best (motion to strike next sentence sustained) — and this is the feeling where the competition might increase — and it is *very possible* that it would have a very undesirable effect on our financial picture." (R-436).

\* \* \*

"Q. Now, Mr. Lewis, your interest in this application applies, does it not, to the areas in which you are authorized to serve and are now serving?"

A. Yes.

Q. *And as to areas which may be without service, you have no interest; is this correct?*

A. *Yes, ma'am, this is true.*" (R-442)

On cross-examination, Mr. Lewis testified as to the pre-ise routes his regular line service follows through Salt Lake City and County to Park City (R-44 - 50), all over main highways.

Joe Schleckman, General Manager of plaintiff Lakeshore (R-397) testified on direct examination (R-399):

"A. Exhibit 18 is a certificate of convenience and necessity No. 545 that gives the applicant (Lakeshore) the authority to operate as a common motor carrier of local groups of persons on *charter round trips, originating on the routes now served* by the applicant (Lakeshore) in its regular common carrier operations within the State of Utah.

Q. When I indicated to a witness yesterday or the day before that you might originate outside

of the territory common to your route, I was in error, was I not?

A. I believe so, yes."

He testified on cross-examination (R-410 - 11):

"Q. Can you tell me what percentage of the charter revenues on these exhibits would you — would come from operations which could be conducted under that exemption?

A. Gee — I am sorry, I would have to check the records and prepare some kind of statement on that. I am not qualified to answer that."

\* \* \*

"Q. Let me ask you a question or two more with reference to the school transportation.

Has that been increasing in volume or — do you know, the proportion of your transportation to and from the school houses and so on.

A. I am sorry, I don't believe I am qualified to answer that, see. I was returned to Salt Lake in January of this year, and I have had six months' experience.

Q. Yes.

A. — so my opinion wouldn't be worthy here." (R-411 - 2).

John Yeaman, a partner of plaintiff Ogden Bus Lines and President of plaintiffs Metro and Wasatch testified (R-416). After their operating authority was identified, his counsel agreed that their sole interest in the application relates to charter service to and from Hill Air Force Base (R-418). With regard to Wasatch and Metro's charter authority, he testified at page 421:

"It is my point of view that we can originate only where we serve." He testified in 1965 they originated about 4 charters from Hill Air Force Base (R-425) and none in the six months of 1966 preceding date of hearing (R-425).

Serge L. Campbell of Continental Trailways testified (R-501). He identified (R-504) an exhibit (R-599) showing a statement of all of the intrastate charters obtained by Continental in 1965 and testified on cross-examination (R-512) that the exhibit reflects 87 charters of which only six involve origin points other than at Salt Lake City. Of the six, one is from Murray High School and would be exempt. He testified (R-515 - 6) that Continental's routes within the 26 mile radius of Salt Lake City are U.S. 91 South, U.S. 40 East and West and U.S. 89-91 North and that Continental's only area of concern as to the application is charters arising on such routes outside of Salt Lake City within the 26 mile radius (R-516).

## ARGUMENT

POINT I. THE EVIDENCE SUPPORTS THE COMMISSION'S FINDINGS THAT THERE IS NEED FOR DEFENDANT'S PROPOSED SERVICE, THAT EXISTING SERVICE IS INADEQUATE AND THAT THE PUBLIC CONVENIENCE AND NECESSITY REQUIRES GRANTING THE DEFENDANT'S APPLICATION.

Plaintiff's complaints here are the same as in *Lewis v. Wycoff Company*, 18 Utah 2d 255, 420 P.2d 264 (1966) where this Court said:

"The criticisms which the protesting carriers make of this order are not unfamiliar in cases of

this kind: that the evidence does not justify finding of public convenience and necessity for the proposed service because existing services offered by them are adequate; that the granting of the order of authority will hazard their continuance; and that the order is too vague and indefinite to constitute a proper grant of authority."

This Court has said many times that an applicant must prove necessity for any proposed service, that the Public Service Commission has the responsibility of safeguarding the ability of existing carriers to maintain financially sound operations to insure efficient and economical service to the public on the long term basis, that the Commission is in better position than this Court to survey the details of such policy considerations, that the Commission has specialized knowledge and experience in this field, and has the advantage of a trial court in proximity to the parties and witnesses, that the facts found by the Commission need not be conclusively established nor shown by a preponderance of the evidence but need only be based on some competent evidence, that the Commission's findings and orders are presumed correct and valid and will not be reversed unless there is no reasonable basis to support them, and that the burden is upon plaintiffs in this Court to show that the findings are thus in error. *Lewis v. Wycoff Company, supra*; *Gardn Freightlines, Inc. v. Hunt*, 19 Utah 2d 234, 429 P.2d 981 (1967); *Ashworth Transfer Co. v. Public Service Commission*, 2 Utah 2d 23, 268 P.2d 990 (1954).

Each plaintiff here has charter authority specifically limited to transporting charter groups originating in

the routes served them in their regular route bus operations (except Metro and Wasatch which originate from Hill Air Force Base) and from there they can generally carry to points and places throughout Utah. Continental's, Lakeshore's, Bingham's, and Lewis Bros.' charter authority is restricted against transportation service for tourists and against any regular schedule or regular route. Continental's charter authority is further restricted against trips wholly within the corporate limits of cities served by inter-urban transportation companies. Defendant Salt Lake Transportation had authority to transport charter groups originating within Salt Lake City and thence throughout Utah. It applied to increase the point of origin to a 26 mile radius of Salt Lake City, and thence throughout Utah. Plaintiffs' regular route authority, limited primarily to major highways, merely crosshatches small areas of the 26 mile radius metropolitan area, leaving vast sections of the 26 mile radius, outside of Salt Lake City, without state-wide charter service. This territory without service defendant proposed to serve.

Farther, before the application was granted, it was impossible for a single charter group whose members were located throughout the 26 mile area, which would usually be the case, to have its members picked up at more than one spot, and then travel together as a group to their destination point. Instead, unless all of them happened to be located on one of plaintiffs' existing routes or in Salt Lake City, they all had to transport themselves to a single origin point. None of plaintiffs' briefs recognize

that defendant Salt Lake Transportation proposed new service, in areas not served by plaintiffs or anyone.

The Commission found, in paragraphs 3 and 4 of the Order (R-620), that Salt Lake Transportation has more than adequate equipment and terminals to conduct the proposed operations and is financially able, experienced and qualified to do so, that extensive planning and promotion is involved in charter operations, and that defendant through Gray Line Sightseeing Companies, Inc. advertises its tours throughout the country. In paragraphs 5 and 15 of the Order, the Commission made the critical findings. Paragraph 5 reflects that a substantial number of witnesses supported the application, including representatives of state agencies and witnesses from other governmental boards, service clubs, resort operators and others, that from such testimony it is apparent there has been substantial population and economic growth in the origin territory and addition of new points of interest therein and throughout Utah, that there is need for charter service originating at points other than Salt Lake City in the various towns and communities which have been established or extended at the various points in the origin territory, and for services between such points and for service from the origin territory to other points in Utah (R-620-1). In paragraph 15, the Commission found that because of limitations on the authority of the existing carriers, they cannot meet the requirements for service outlined by supporting witnesses and proposed by the applicant for which the Commission found a public

ped. Further, the Commission found that a restriction in the grant of authority against points served by existing carriers would prevent applicant from performing the required service and would result in authority which would not adequately meet the public requirement, that the grant of authority would not unduly affect existing carriers adversely, would not burden the highways and would serve the public interest and be responsive to public need (R-624).

Does the record contain support of any substance for those findings and determinations? *Lakeshore Motor Coach Lines v. Bennett*, 8 Ut. 2d 293, 333 P.2d 1061. Is there any reasonable basis in the evidence to support them? *Garrett Freightlines, Inc. v. Hunt*, 19 Ut. 2d 234, 4 P.2d 981. If so, the order should be affirmed.

Mr. Boynton, applicant's President, testified of defendant's extensive advertising (R-210, 214), its equipment to handle charter operations (R-212) and gave evidence of its healthy financial condition (R-209). He described the great growth in the 26 mile area (R-215), the growth in tourism (R-231), the efforts by all governmental agencies to develop further tourist business (R-216-9), and said that in his expert and experienced opinion there is a requirement for service which is not being filled and which his company is eminently qualified to handle (R-222). He specifically said the company proposes charter trips for small population centers (R-224) and that Ogden, Weber County and Provo were eliminated from the area of application because the company

was attempting to give service only to the section of the country which does not currently have service (R-255). He said the 26 mile area has become a single metropolitan area rather than separate cities and towns in the minds of the people (R-255), thus clearly showing a need for a carrier to have charter authority originating from metropolitan Salt Lake rather than from the Salt Lake City limits, so as to interconnect it all. He described the need for point to point service within the 26 mile area (R-226) and showed the difficulty of having charter operations originate only at Salt Lake City instead of being able to pick up members of the group wherever they might be within the area of origin. (R-227) He said the proposed operations could not be conducted if individual points in the 26 mile area were eliminated because the public would be unable to understand numerous exceptions having to be made to an offering of service throughout the origin area. (R-232) With numerous small groups existing throughout the area, none of which alone could economically charter a bus, the need to be able to pick up several groups throughout the area for consolidation into one larger group is obvious, to the end that all may have available the needed charter service not heretofore available. Such service could not be offered if exception were made for each of plaintiffs' cross-hatching authorities.

Mr. Jennings of the State Tourist and Publicity Council testified of the growth in use and development of tourist attractions in the area and the growth in the advertising to obtain more tourists (R-40), showing that new destination points and new passengers have and are



being developed. He testified of the demand and need for charter service within the area (R-40, 43-4) and of the unavailability and undiscoverability of existing service (R-56-7, 63-4, 67). His testimony and that of the witnesses throughout clearly shows that even if existing service is authorized in limited cross-hatching of the area, if it is not promoted and no one knows of its existence. What is unknown cannot be used and is, therefore, surely inadequate.

Mr. Moler of the Utah Tourist Council testified of the great growth in tourism, said the more transportation available, the better travelers could be served, and clearly showed how the national advertising of defendant's tours benefited local tourism (R-161, 163, 171).

Mr. Koziol of the Utah Park and Recreation Commission identified groups throughout the 26 mile radial area that would be traveling to Wasatch Mountain Golf Course at Heber, to Rockport, and other state parks and said, with regard to the application, "there is little doubt that the need for additional transportation would be great" (R-175-8, 184).

Mr. Doman of the Boy Scouts testified of the need for defendant's type of charter authority originating throughout the 26 mile area and of individual charters stopping at more than one location throughout the area. (R. 96-111)

Thus, personnel from two state tourist agencies, from the State Park and Recreations Commission and from the Boy Scouts have all positively described an existing and growing need throughout the entire 26 mile

radius as a whole for charter service which none of the plaintiffs are authorized to render. To the extent limited cross-hatching service might be authorized, if it is known to witnesses of this type and the others who testified, who because of their positions are so situated as to best know what service the public needs, then it can be confidently concluded that existing service is inadequate.

It is interesting that notwithstanding such evidence of need for service throughout the 26 mile radius as a whole, plaintiffs now each take their own limited areas of service and contend there was no reason shown why defendant should be authorized to serve. Plaintiffs spoke from the other sides of their mouths at hearing, for when Mr. Boynton was asked if it would be feasible to conduct operations if, for example, Park City were eliminated as a point of charter operation, all three of plaintiffs' counsel objected to the materiality saying:

"When you have an application involving the total area, are we going to go over each individual point and community in the entire 26 mile radius and then each point and community in the entire State of Utah and ask about those?"

Continental's counsel added the objection:

"And for the added reason that that comes under the purview of the Commission's decision as to the effect of this thing on this carrier and other carriers." (R-232).

Notwithstanding that incongruity, other witnesses testified of the need for defendant's proposed charter service and inadequacy or non-existence of plaintiff services in limited areas.

Thus, Mr. Ashton testified of the conversation of Heber Valley from agricultural and mining to tourist business (R-56), and said that applicant's proposed service has not been available in the area before, that it lends itself to the development of the tourist industry, that "we need them." "we have got to have more bus facilities," that there has been no effort by other companies to show that service is available, and that Wasatch County Chamber of Commerce supported the application (R-70-9). That clearly shows the inadequacy or undiscoverability of any existing charter service in Wasatch County, and shows a need for defendant's service in order to "sustain economic conditions" in the County.

Mr. Hurley similarly testified on behalf of Park City. He positively said that charter service originating throughout the 26 mile radius of Salt Lake City is not available, is needed and is desirable for Park City (R-156-7). The City Council of Park City similarly resolved (R-256). Mr. Hurley said not only would the granting of the application not burden the public streets, it would relieve congestion in Park City (R-158).

Mr. Henry Cameron of the Granger-Hunter Chamber of Commerce in Salt Lake County said the proposed service would be of benefit to the area and supported the application because a carrier that could be counted on is needed (R-191).

Mr. Burns of the Kearns Lions Club Utah said "there is great need" for charter service "which we haven't been able to get." According to Mr. Burns, the

fourth or fifth largest city in Utah is without charter service and that it would definitely benefit the town (R-193-5). He positively testified that Lewis Bros. and Greyhound would not give them charter service (R-194).

Mr. Covington of the Kearns Chamber of Commerce supported the application because it is an asset to the community and because Kearns is without charter service (R-293).

Mr. Beesley of the South Davis Chamber of Commerce presented the Chamber's resolution supporting the application, and said it would benefit Davis County, there was not much activity in soliciting service and that it is wanted throughout Davis County (R-302-4).

Mr. Pace, Summit County Clerk, showed the Board of Commissioners of Summit County favored the application, said that existing service is inadequate because twice his group had had to go 25 miles to obtain charter service, and that it would be of great benefit to the County to have defendant's service (R-312-7).

Mr. Bronson of Alta and Mrs. Howard of Brighton, Utah, each described the growing skiing facilities, the growing out-of-state tourist business, and the great need for charter service originating throughout the 26 mile radius to bring charter parties to the ski resort and to take guests from the ski resorts throughout the state. Each said that there is no such existing service (R-326-236-8).

Even the three public witnesses called by plaintiff

Lewis Bros. testified they would like Salt Lake Transportation's proposed service and that it would benefit Park City (R-378, 383, 394).

That plaintiffs are not interested in serving this evidenced public need is best shown by Mr. Lewis' testimony that his interest in the application lies only in areas in which his companies are now authorized to serve *and* are now serving, *and that as to areas which may be without service, he has no interest* (R-42). Mr. Boynton, on the other hand, testified that Ogden, Weber County and Provo were eliminated from Salt Lake Transportation's application because the company was attempting to serve those sections without service (R-255).

All three plaintiffs' briefs complain the evidence does not support the Commission's finding of need. They overlook that Mr. Boynton's testimony alone shows unrebutted evidence of need for charter service throughout the 26 mile area. What better evidence could there be than that from a passenger bus operator, long experienced in the field, who has thoroughly studied the situation, concluded that need exists and is therefore willing to commit company resources to fulfilling it. In *Lakeshore Motor Coach Lines, Inc. v. Welling*, 9 Utah 2d 114, 339 P.2d 1011, this Court held that the testimony of the applicant, Mr. Welling, was competent evidence of existing conditions and need for service, and that the Commission's granting of authority, based solely on his testimony alone, provided a basis for the finding of public need, even though the Commission might have chosen not to believe him.

Plaintiffs' briefs argue the witnesses said they were unaware plaintiffs could perform the desired service, or that they would not object if plaintiffs performed it (Continental brief, pp. 32; Lewis brief, pp. 5-14). Plaintiffs take testimony out of context to support that argument. The witnesses testified either (1) they had been refused charter service by plaintiffs, (2) if charter service existed, they did not know of it, or (3) it was inadequate for some reason. The fact is, plaintiffs are not authorized, as the Commission found, "to meet the requirements for service outlined by supporting witnesses . . . for which the Commission finds a public need." (R-624). It is a distinctly loaded question to ask the public witnesses, as plaintiffs did throughout, to assume plaintiffs could provide the required service and then ask if that assumed service would be adequate. Obviously the witnesses wanted service; that was why they were there in the first place. Obviously the witnesses were not aware plaintiffs could serve; plaintiffs are not authorized to serve and were not serving within the scope of defendant's application. Therefore, the quoted testimony in plaintiffs' briefs falls far short of destroying the evidenced need for service. The best that can be said is that plaintiffs' cross-examination affected the weight of the evidence, which the Commission weighed and found in defendant's favor; there is, however, support of substance in the record for the Commission's order. Plaintiff's generalization in their briefs put them in the position of defendant in *Lake Shore Motor Coach Lines, Inc. v. Bennett*, *supra*, where this Court said:

"As against the proposition of the plaintiffs, supported by references to evidence from shippers as to the adequacy of their service, the defendant rejoins with a generality that there is evidence in the record supporting their application, relying in the main on references to witnesses generally. We have heretofore pointed out the impropriety of making blanket assertions and leaving the responsibility to the court to ferret out evidence from the record to support it."

*Lake Shore Motor Coach Lines, Inc. v. Bennett*, *supra*, and *Salt Lake Transfer v. Public Service Commission*, 11 Ut 2d 121, 355 P.2d 706 (1960), cited by plaintiffs, are factually not in point. First, in each of those cases, defendants proposed service duplicated the existing service with no justification shown for any duplication. Here defendant proposes to serve an entirely new area previously without service and whatever duplication here results was weighed by the Commission; it specifically found that the grant of authority would not unduly effect existing carriers and would best serve the public interest and needs (R-624).

Second, those cases involved commodity carriers and not passengers; the difference in the availability of evidence is recognized in considering that in the case of commodities relatively few shippers transport many goods to many points and places throughout the given area and hence become far more knowing about what carrier services are available or not and how adequate or inadequate they may be. In the case of carriage of passengers, as here, the users of the service are individual passengers

who make relatively few trips to individual places; members of the public using passenger carriers are far less identifiable than in the case of freight shippers.

Therefore, in the case of a passenger carrier showing the public convenience and necessity, better evidence could not be presented in support of the application to show the need for the proposed service than three state officials all interested in developing tourist business, four members of chambers of commerce from parts of the area involved, two city and county officials and two service club or organization officials, most of them were armed with resolutions from the entities they represented supporting the application. As in *Ashworth Transfer Co. v. Public Service Commission*, *supra*, where a newspaper business editor and an oil geologist, though not shippers, testified of the growth of the petroleum industry and needs for service therein, this Court said: "These men are probably better qualified to offer a picture of the entire industry than would be a small oil operator using trucking services." Defendant did not stop there. Two resort operators also testified precisely of the need for service and of the unavailability of present service. Indeed, the three resort operators called by plaintiffs said the proposed service was desirable and beneficial.

What better evidence of need and public convenience and necessity could be presented. Clearly, there is some substantial evidence in the record here to support the Commission's findings that there is a need for charter service as applied for and that existing carriers cannot meet the needs outlined by the witnesses.



POINT II. THE COMMISSION'S FINDINGS AND ORDER WERE NOT ARBITRARY AND CAPRICIOUS AND DID CONSIDER THE EFFECT OF GRANTING THE APPLICATION ON EXISTING CARRIERS.

All three plaintiffs complain that revenues will be lost because of the granting of the application. However, the evidence shows that the effect of the granting of the application will be minimal on plaintiffs. It must be recognized (1) that defendant already had charter authority originating from Salt Lake City and (2) that movements from schools when "transporting students or their instructors to or from school or to or from school activities" are exempt from the Motor Vehicle Transportation Act (54-6-12(a), U.C.A. 1953) and a certificate of convenience and necessity is not required for such transportation. Just how does the record show plaintiffs would be affected?

Lake Shore's operating witness made a mere general statement that charter revenue regulates the fare and amount of service provided to regular route passengers (R-401) and then when cross-examined with regard to financial exhibits (R-556-7) showing comparative revenues and profit and loss for charter versus other operations, and when asked what revenues on the exhibits came from exempt operations, he said "I am not qualified to answer that, . . . I have had six months experience — so my opinion wouldn't be worthy here." (R-411-2). This is hardly a showing that Lake Shore will be unduly affected by the granting of the application.

The record shows Metro and Wasatch originated charter trips from the area of their interest in the six months of 1966 preceding date of hearing and only five in 1965 (R-425). It by no means follows that the granting of the application would cause them to lose this slight amount of traffic; defendant's traffic may come from the evidenced growth in the industry. It certainly cannot be said there is any evidence that the slight overlapping of service of the granting of the application will unduly affect them.

Continental Trailway's exhibit (R-599) showed it obtained 87 charter trips in 1965, but only six originated out of Salt Lake City in the 26 mile radial area, and one of those from Murray High School was exempt (R-512). Therefore, Continental would be affected by the granting of the application to the extent of five charter trips out of 87, and there is no showing that those five would necessarily be lost. The effect here is minimal.

The Exhibits of Lewis Bros. and Bingham (R-574, 578) show they originated 10 charter trips from the Granger-Hunter-Magna-Kearns area in 1965, but only six were not from schools. In the six months preceding hearing in 1966, they showed only four trips which did not originate from schools. On the other hand, their Exhibit 33 (R-575, 575a) shows 63 charter tours originating from Salt Lake City in 1965 where defendant Salt Lake Transportation already had authority to serve. Hence, these plaintiffs' interest in the application amounts to only 10 charter trips in the 18 months preceding hearing and there is no showing that these would be lost if the application

were approved. These plaintiffs certainly compete handsomely with defendant in Salt Lake City. Again, the effect is minimal. Lewis Bros.'s and Bingham's witnesses testified defendant's proposed service would be attractive if it did not disrupt the regularly scheduled bus service Park City now has (R-394), and the Park City Chamber of Commerce passed a similar resolution (R-545); yet, these plaintiffs' operating officer could only testify the granting of the application would "create a problem for us — it is *very possible* it would have a very undesirable effect on our financial picture." (R-436).

It is small wonder then the Commission found that the grant of authority as applied for "would not unduly affect existing carriers adversely." (R-624) Certainly there is some substantial basis in the record for that finding.

This case is virtually identical to *Utah Light and Traction Co. v. Public Service Commission*, 101 Ut. 99, 18 P.2d 683 (1941). There, defendant was granted passenger authority between Salt Lake City and nine smaller communities in the south end of Salt Lake County. Plaintiff Traction Company operated common carrier passenger service between Salt Lake City and Murray, Midvale and Sandy. Communities not being served which defendant applied to serve were Crescent, West Jordan, South Jordan, Riverton and Taylorsville. The Commission found that even though some of the territories were served by plaintiff, the public convenience and necessity justified issuance of the authority so that the new territory might have service. This Court held, in affirming:

"The law does not require that the revenue of an operating company must be guaranteed by its existing figure before another company may enter. . . .

"If the need for new or additional service exists, it is the duty of the Commission to grant certificates of convenience and necessity to qualified applicants, but when a territory is satisfactorily serviced, and its transportation facilities are ample, a duplication of such service which unfairly interferes with the existing carriers may undermine and weaken the transportation set up generally and thus deprive the public of an efficient permanent service. True, existing carriers benefit from the restricted competition, but this is merely incidental in the solution of the problem of securing adequate and permanent service. The public interest is paramount. . . . Of course the public interest may well be subserved by preventing waste. . . . But the waste must be such as would injure the public or interfere with its interests, growth and development. *It must not be the prevention of waste carried to the extreme where it prevents or interferes with progress and equipment or methods or ways of serving the public. And the determination as to whether waste would result, or whether the waste which did result would be so against the public welfare and interest that it should be prevented, are questions for the Commission to determine. . . .*

"In cases such as this, where there is an extensive new territory to be served, which would continue without bus service unless the application be granted, and the service to such communities would be impractical and of only half its public value, if rendered, unless it had a direct connection with the larger centers, such service

should not be denied because in a limited territory it came into competition with an existing carrier. *These services must be so rendered as to promote the public welfare, and the first determination of that matter rests with the Commission.*" (Emphasis added)

That is the case here. The bulk of the territory within the 26 mile radial area is without service. Though some duplication might result, the growth and development of the metropolitan area and the public interest requires that more than a mere cross-hatched portion be served. The proposed service would be impractical and of only half of its public value if rendered without direct connection to Salt Lake City and without direct connection to all points and places within the 26 mile radius. The needed service should not be denied those areas without service simply because it comes into some overlapping with plaintiffs, whose limited services are generally unknown to the witnesses in the tourist business.

Likewise, in *Lake Shore Motor Coach Lines, Inc. v. Welling, supra*, defendant was granted authority to operate taxi service between Ogden and the Salt Lake City airport by adding nine additional points of pickup and delivery between those points. Plaintiff operated the same bus service between Salt Lake and Ogden which it operates here. Defendant's application afforded a single continuous trip from the airport to Ogden without the necessity of transferring from one carrier to another. In affirming the order granting defendant authority to serve intermediate points along plaintiffs' routes, this Court said:

"The fact that the continued well-being of existing carriers must be taken into account does not mean that once a carrier such as plaintiff is granted a franchise it acquires an inviolable and exclusive right to render a public service merely because it meets its own standard of adequacy.

In *Lakeshore Motor Coach Lines, Inc. v. Bennett* *supra*, this Court recognized that an applicant must show that the public convenience and necessity would be served by the granting of its application, and said:

"This does not mean that there cannot be parallel transportation service. Many exist and will continue to do so because some times carriers, parallel in one area, diverge into others; and existing carriers, although rendering good service, may not be sufficient for the existing business or its potential."

Plaintiff Lake Shore's Point (brief, p. 22) that increased population, tourism and sports activity is competent evidence of public convenience and necessity is without merit and contrary to existing case law. *Lakewood Transfer Co. v. Public Service Commission*, *supra*, specifically holds: "Evidence of growth of an industry within the state is competent in a hearing to determine public convenience and necessity." As in that case, where there is growth in an industry, as the record clearly shows here as to the tourist business, the Commission may find there is need for additional carrier service to serve the growth, without unduly affecting existing carriers serving the present traffic. This Court there said:

". . . the statute does not require that the Commission find that the present facilities are enured

inadequate. It merely requires that the Commission 'shall take into consideration . . . the existing transportation facilities.' "

Clearly the Commission did not arbitrarily and capriciously fail to consider the effect on existing carriers by the granting of the application. There is substantial evidence in the record that they will not be unduly affected adversely thereby and that the granting of the application will serve the public convenience and necessity.

POINT III. PLAINTIFF CONTINENTAL IS BARRED FROM COMPLAINING THAT THE COMMISSION FAILED TO MAKE ESSENTIAL FINDINGS; THE COMMISSION DID NOT FAIL TO MAKE ESSENTIAL FINDINGS.

The Public Utilities Act, 54-7-15, U.C.A., 1953, requires:

"No corporation or person shall in any court urge or rely on any ground not so set forth in said application (for rehearing)."

Continental petitioned for rehearing (R-635), but nowhere therein did it complain of the lack of essential findings. Had it brought this claim to the Commission's attention, the Commission would have had opportunity to correct the findings, if necessary. For that reason alone, these plaintiffs cannot now urge or rely upon that ground in this Court.

Further, the Commission did not fail to make essential findings. In *Utah Light and Traction Co. v. Public Service Commission*, *supra*, this same ground was urged, and

this Court in affirming the sufficiency of the findings, held:

“Of course the Commission need not descend to such details as to find the number of people riding each bus or train daily. . . . These findings are not set forth in the detail and particularly used by the courts of law whose judgments determine ultimate rights of life and property title, nor need they be so definite and orderly.”

Plaintiff complains that the Commission's Order finds defendant has more than adequate equipment and is financially able to conduct its operation in Finding 3. Defendant's equipment list (R-530-6) and financial statement (R-541) are in evidence; the Commission need not count and recite the exact number of vehicles or exact financial condition in dollars in its Order any more than it needed to descend to such details as the number of people riding each bus or train daily in the *Utah Light and Traction* case. Plaintiffs complain of Finding No 5 that there is need for the service, but plaintiffs failed to note the Finding says that substantial number of witnesses appeared and from such testimony the Commission found the need. That evidence is restated in Point I hereof. In the *Utah Light and Traction* case, the Commission “found that the territory above set forth as without bus service is in need of bus service.” There the Commission did not even state the source of the finding of need; yet this Court affirmed



Finally, plaintiffs complain of Finding No. 15, saying it is an ultimate finding. Of course it is an ultimate finding; it is the next-to-last one and the last one is only ministerial. Finding 15 is based on all of the preceding findings in paragraphs 1 through 14. To conclude the findings of basic facts with the finding of the ultimate fact before stating the decision is the correct procedure, even from the authorities plaintiff cited, i.e., *Saginaw Broadcasting v. F.C.C.*, 96 F.2d 554. The Commission's Order here makes all of the finding held up adequate in the *Utah Light and Traction Co.* case

## CONCLUSION

It is submitted that the record shows substantial evidence of the public need for the service defendant Salt Lake Transportation requested it be permitted to render. There is substantial evidence that plaintiffs cannot or do not render service for which there is public need in the bulk of the area involved in the application. There is substantial evidence that existing service is inadequate. There is substantial evidence of growth, both in the traffic and points of origin and destination in the area of the application. There is substantial evidence that the existing carriers will not be unduly affected adversely to the extent the granting of the application slightly duplicates existing service. There is a sound and reasonable

basis in the evidence justifying the need for that duplication. There is no showing by plaintiffs that they will be unduly affected thereby.

In the interest of the promotion of tourism and the economic benefit resulting therefrom in the greater Salt Lake metropolitan area and throughout the state, and in the interest of the long range public convenience and necessity, it is submitted the Order of the Public Service Commission should be affirmed.

Respectfully submitted,

PHIL L. HANSEN

*Attorney General of Utah*

and

H. WRIGHT VOLKER

*Assistant Attorney General*

State Capitol Building

Salt Lake City, Utah

*Attorneys for Defendant*

*Public Service Commission of  
Utah*

and

CHRISTENSEN and

JOSEPH J. PALMER

Seventh Floor, Continental Bank  
Building

Salt Lake City, Utah 84101

*Attorneys for Defendant  
Salt Lake Transportation Co.*